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Keeping First Nations Informed

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Message from the Director

As I travel throughout Indian Country and meet with many tribal representatives, I am asked about the current focus on Bank Secrecy Act (BSA) compliance. Many of these concerns are arising from the recent significant fine assessed by the Financial Crimes Enforcement Network (FinCEN) against a tribal casino in Oklahoma along with publicity that was generated by several FBI cases that were connected to that action. In addition, the number of BSA civil examinations has increased as the federal government directs more resources to this area.

While much of the impetus behind the creation of the Bank Secrecy Act was initially focused on combating the ability of organized crime to launder proceeds of illegal activities, the events of September 11, 2001 brought a renewed emphasis on this area by highlighting the need to track the movement of money that might be used to finance terrorism. The post 9/11 world brought an entire series of new laws and regulations designed to tighten the reporting requirements and ensure that all levels of government have access to vital information to combat crime and terrorism. The Patriot Act is the best example of these changes, but the extension of Suspicious Activity Reporting to tribal casinos in March 2003 is another example.

Hopefully, all governments share a common objective of minimizing the opportunity for individuals to launder funds and/or move money that might be used to harm ourselves, our children, and our neighbors. The recent tribal money laundering case in Oklahoma, as well as other reports filed by tribal entities, has shown that organized crime and terrorists have discovered tribal

entities and are making attempts to use them for money laundering.

We are grateful that many tribes have instituted strong Bank Secrecy Act Compliance Programs and are using various tools to alert law enforcement to suspected or potential illegal activities. The filing of FinCEN Forms 102 and 103 by tribal casinos are one example, but we have also had numerous telephone calls from tribal officials to the Money Laundering Hotline. Many Tribes have shown that they want to be full partners in this area. Despite the burden and cost associated with the BSA Compliance Program, there is a keen recognition that we all need to work together to minimize the possibility of money laundering.

However, we are also aware that there are Tribes that lack fully effective BSA programs; ITG stands ready to assist them in making enhancements. ITG Specialists are available to provide training for your staff, copies of pertinent federal regulations, or to assist in reviewing your BSA Compliance Program for your entity. I encourage you to take advantage of our resources and partner with ITG to ensure that Indian Country is a leader in Bank Secrecy Act compliance.

Christie Jacobs

Helpful Hints to Avoid Penalties

One of the areas that surfaced as a concern in Tribal responses to the 2005 Customer Satisfaction Survey is the need for additional assistance in mitigating penalties. While your assigned ITG Specialist is always available to assist you, the best way to avoid penalties is to have an in-depth understanding of what can be done to reduce or eliminate them before they are ever assessed.

In an effort to assist, ITG has created a "Helpful Hints to Avoid Penalties" guide, which is now available on the ITG web site under the Employment Tax page. Hopefully, the suggestions outlined in that guide will reduce penalty assessments, but if a penalty is asserted, the guide also outlines the steps required to address it.

Penalty notices arise from various situations such as failure to deposit payroll taxes timely and late filing or non-filing of various returns. The two most important things to do are:

Determine, through a review of your records, if the notice is correct, AND
Respond to the notice on or before the date required.

Failure to respond timely can lead to the assessment of further penalties and

interest. Failure to review records to ensure the correctness of the notice can lead to payment of unnecessary penalties. If the notice is determined to be correct and additional tax, penalties, and interest are due; payment should be made within the time frame shown in the notice.

Your Indian Tribal Government Specialist and other IRS personnel are ready to assist you in understanding the notices and determining their accuracy. Our Customer Account Services staff can be contacted toll-free at 1-877-829-5500. This call center is open from 8:00 am to 4:30 pm eastern time.

Your ITG Specialist is also available to assist when a timely response to an incorrect notice does not achieve a satisfactory resolution to the situation. The ITG Specialist can review your response and help you file the proper forms to resolve the issue or ensure the case is routed to the proper office for resolution.

We hope that the guide, coupled with Publication 4268, our on-line Employment Tax Guide for Indian Tribal Governments, will help Tribes to meet federal tax administration requirements with a minimum risk of penalties.

Reporting Abuses/Schemes

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian country. Working together can help ensure the integrity of tribal finances, and eliminate the threats posed by individuals with schemes that appear “too good to be true” and often are.

If you are aware of financial impropriety or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860 or via e-mail at tege.itg.schemes@irs.gov.

Employee Tip Income Program Questions

ITG has a full-time Tip Coordinator to assist you with any questions about tip reporting agreements. If you are interested in securing a Tip Agreement, have questions concerning your existing agreement, or have received a notice about tip reporting responsibilities that is unclear, please contact Julie Reese at (303) 231-5250, ext. 236.

A Primer on Published Guidance

For anyone not familiar with the inner workings of tax administration, the array of

IRS guidance may seem, well, a little puzzling at first glance. To take a little of the mystery away, here's a brief look at seven of the most common forms of guidance. In its role in administering the tax laws enacted by the Congress, the IRS must take the specifics of these laws and translate them into detailed regulations, rules and procedures. The Office of Chief Counsel fills this crucial role by producing several different kinds of documents and publications that provide guidance to taxpayers, firms and charitable groups. As we begin to upload substantial content to the "Published Guidance" section of the ITG web site, we thought it might be useful to explain the various types of issuances that can be located there.

Regulation. A regulation is issued by the Internal Revenue Service and Treasury Department to provide guidance for new legislation or to address issues that arise with respect to existing Internal Revenue Code sections. Regulations interpret and give directions on complying with the law. Regulations are published in the Federal Register. Generally, regulations are first published in proposed form in a Notice of Proposed Rulemaking (NPRM). After public input is fully considered through written comments and even a public hearing, a final regulation or a temporary regulation is published as a Treasury Decision (TD), again, in the Federal Register.

Revenue Ruling. A revenue ruling is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties and regulations. It is the conclusion of the IRS on how the law is applied to a specific set of facts. Revenue rulings are published in the Internal Revenue Bulletin for the information of and guidance to taxpayers, IRS personnel and tax professionals. For example, a revenue ruling may hold that taxpayers can deduct certain automobile expenses.

Revenue Procedure. A revenue procedure is an official statement of a procedure that affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code, related statutes, tax treaties and regulations and that should be a matter of public knowledge. It is also published in the Internal Revenue Bulletin. While a revenue ruling generally states an IRS position, a revenue procedure provides return filing or other instructions concerning an IRS position. For example, a revenue procedure might specify how those entitled to deduct certain automobile expenses should compute them by applying a certain mileage rate in lieu of calculating actual operating expenses.

Private Letter Ruling. A private letter ruling, or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in

the request and carries out the transaction as described. A PLR may not be relied on as precedent by other taxpayers or IRS personnel. PLRs are generally made public after all information has been removed that could identify the taxpayer to whom it was issued.

Technical Advice Memorandum. A technical advice memorandum, or TAM, is guidance furnished by the Office of Chief Counsel upon the request of an IRS director or an area director, appeals, in response to technical or procedural questions that develop during a proceeding. A request for a TAM generally stems from an examination of a taxpayer's return, a consideration of a taxpayer's claim for a refund or credit, or any other matter involving a specific taxpayer under the jurisdiction of the territory manager or the area director, appeals. Technical Advice Memoranda are issued only on closed transactions and provide the interpretation of proper application of tax laws, tax treaties, regulations, revenue rulings or other precedents. The advice rendered represents a final determination of the position of the IRS, but only with respect to the specific issue in the specific case in which the advice is issued. Technical Advice Memoranda are generally made public after all information has been removed that could identify the taxpayer whose circumstances triggered a specific memorandum.

Notice. A notice is a public pronouncement that may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law. For example, notices can be used to relate what regulations will say in situations where the regulations may not be published in the immediate future.

Announcement. An announcement is a public pronouncement that has only immediate or short-term value. For example, announcements can be used to summarize the law or regulations without making any substantive interpretation; to state what regulations will say when they are certain to be published in the immediate future; or to notify taxpayers of the existence of an approaching deadline.

SSA/IRS Reporter

The Commissioners of both the IRS and the Social Security Administration produce a joint newsletter that is issued quarterly. Publication 1693, SSA/IRS Reporter, serves as a tool for the two Commissioners and their agencies to communicate current issues and concerns to employers regarding electronic filing of returns along with additional relevant employer information. The SSA/IRS Reporter may be accessed at www.irs.gov with keyword search of "SSA/IRS Reporter".

The Summer 2006 edition of the SSA/IRS Reporter includes announcements of four changes to electronic filing.

New Batch Provider Software for Tax Professionals Available from EFTPS.
Social Security Requires Electronic Filing for Forms W-2 Beginning with Tax Year 2006.

Electronic Data Exchange (EDI) and Proprietary Formats for Electronically Filed Forms 941 and 940 Discontinued after November 13, 2006.

IRS Will Not Accept Information Returns Filed on 3 1/2-inch Diskettes Effective January 1, 2007.

For further information on these changes to electronic filing and other relevant employer information, order Publication 1693 at 1-800-829-3676 or use this link www.irs.gov/pub/irs-utl/ssa_irs_reporter_summer_2006_english.pdf.

Filing Information Returns Electronically (FIRE)

An information return is a tax document used to report certain types of payments as required by Internal Revenue Service Code Regulations. Some information returns are filed electronically via the FIRE (Filing Information Returns Electronically) system at <http://fire.irs.gov>.

The following information returns can be filed electronically: Forms 1042-S, 1098, 1099, 5498, 8027, and W-2G. Any filer of these information returns may file electronically. However, any filer who files 250 or more of the listed returns for any calendar year must file electronically or by magnetic media. The 250 or more requirement applies separately to each type of form.

(Please note that Forms W-2 are filed with the Social Security Administration at www.socialsecurity.gov/employer.)

The benefits of using the FIRE system include:

It's Fast, Paperless, and Easy to Use.

It's Accurate and Efficient.

It's Secure with 128-bit Encryption.

It's Flexible with Extended Due Dates.

For further information on the benefits and details of using the FIRE system refer to Publication 3609 Filing Information Returns Electronically. Check out FIRE along with other available electronic filing and payment options at www.irs.gov.

Section 530 Relief Requirements

Section 530 of the Revenue Act of 1978 provides relief, or safe haven, from federal employment tax obligations if certain requirements are met. During an employment tax examination, with an issue of determining whether certain workers are treated correctly as independent contractors, Section 530 relief provisions must be considered.

Three requirements must be met to qualify for relief under Section 530 - reasonable basis, substantive consistency, and reporting consistency (timely filed Forms 1099-MISC). If the entity under examination fails under any of the three requirements, Section 530 does not apply.

I. Reasonable Basis

The entity must have a reasonable basis for not treating the workers as employees and can document one of the following:

The entity reasonably relied on a court case about Federal taxes or on a ruling issued to the entity by the IRS; or

The entity was audited by the IRS when similar workers were treated as independent contractors and the IRS did not reclassify those workers as employees; or

The entity treated the workers as independent contractors because a significant segment of the same industry treated similar workers as independent contractors; or

The entity relied on some other reasonable basis such as the advice of a lawyer, or accountant, with direct knowledge of the facts.

II. Substantive Consistency

The entity (including any predecessor to the entity) must have treated the workers, and any similar workers, as independent contractors.

III. Reporting Consistency

The entity must have timely filed Forms 1099-MISC for each worker, unless the worker earned less than \$600 in the calendar year. If the entity timely filed Forms 1099-MISC for some workers, but not others, relief is not available for the workers who did not receive timely filed Forms 1099-MISC.

Example:

XYZ entity had an IRS employment tax audit in 1995. At that time Education Committee members were treated as independent contractors and the IRS did not reclassify the Committee members as employees. XYZ was selected for IRS employment tax examinations for years 2003 and 2004. XYZ continued to treat the Education Committee members as independent contractors for all years. In

2003, XYZ timely filed all required Forms 1099-MISC to all Education Committee members. In 2004, XYZ failed to timely file Forms 1099-MISC for the Committee members.

XYZ meets the reasonable basis and substantive consistency tests for both 2003 and 2004. However, XYZ meets the reporting consistency test only for 2003. Therefore, XYZ does qualify for safe haven for 2003 but does not qualify for safe haven for 2004.

For further information on independent contractor vs. employee issues plus potential assessments, if not eligible for Section 530 relief, refer to the April 2006 ITG Southwest Newsletter edition on line at www.irs.gov/tribes. Refer to Publication 1976, Independent Contractor or Employee?, and Revenue Procedure 85-18, 1985-1 CB 518, for information on Section 530 Relief Requirements.

Publication 4268—Employment Tax Guide for Tribes

Our on-line Employment Tax Guide continues to receive a very positive response from tribal payroll and finance employees. You can download this comprehensive guide from a link on our landing page at www.irs.gov/tribes.

Southwest Indian Tribal Governments Specialists

The Southwest Group is dedicated to providing quality service to our customers. If you have any suggestions for improvements, concerns, or innovative ideas, please e-mail Steve Bowers at Steve.D.Bowers@irs.gov. We appreciate and welcome your input.

The Southwest ITG Specialists are listed below with their assigned tribes and pueblos. If you have a question and your assigned Specialist is not available, please contact Steve Bowers, Southwest Group Manager, at (714) 347-9430 or e-mail him at Steve.D.Bowers@irs.gov.

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Arizona: Ak-Chin Community, Ft. McDowell
Yavapai Nation, Havasupai Tribe, Kaibab-
Paiute Tribe, Yavapai-Apache Nation,
Yavapai-Prescott Indian Tribe
Utah: Paiute Indian Tribe of Utah

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Arizona: Navajo Nation, White Mountain
Apache Tribe
Utah: Skull Valley Band of Goshutes

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Arizona: Ft. Mojave Indian Tribe, Hualapai
Tribe, Hopi Tribe, Salt River Pima-Maricopa
Indian Community, Tonto Apache Tribe
Utah: Ute Indian Tribe of Utah

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River Indian Tribes, Ft. Yuma-Quechan
Indian Tribe, Gila River Indian Community,
Pascua Yaqui Tribe of Arizona, San Carlos
Apache Tribe, Tohono O'odham Nation

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New Mexico: Isleta Pueblo, Jicarilla Apache
Tribe, Laguna Pueblo, Mescalero Apache, San
Felipe Pueblo, Sandia Pueblo, Santa Ana
Pueblo, Zuni Pueblo

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New Mexico: Acoma Pueblo, Jemez Pueblo,
Picuris Pueblo, San Juan Pueblo, Santa Clara
Pueblo, Santo Domingo Pueblo, Tesuque
Pueblo, Zia Pueblo

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New Mexico: Cochiti Pueblo, Nambe Pueblo,
Pojoaque Pueblo, San Ildefonso Pueblo, Taos
Pueblo
Colorado: Southern Ute Tribe, Ute Mountain
Ute Tribe
Texas: Ysleta Del Sur Pueblo

To add your name or e-mail address to our mailing list, please contact us via e-mail at: Suzanne.V.Perry@irs.gov or call Suzanne Perry at (602) 207-8254.

Account or Tax Questions?

Call Customer Account Services at 1-877-829-5500 or contact your assigned ITG Specialist.

Federal Tax Calendar for Third Quarter 2006

July 2006

Monday, July 3rd - Pull Tabs Annual Form 11-C due for tribe and all agents

Thursday, July 6th - Make a deposit for 6/28-6/30*

Friday, July 7th - Make a deposit for 7/1-7/4*

Monday, July 10th - Employees report June tip income to employers if \$20 or more
Wednesday, July 12th - Make a deposit for 7/5-7/7*
Friday, July 14th - Make a deposit for 7/8-7/11*
Monday, July 17th - Make a deposit for June if under the monthly deposit rule**
Wednesday, July 19th - Make a deposit for 7/12-7/14*
Friday, July 21st - Make a deposit for 7/15-7/18*
Wednesday, July 26th - Make a deposit for 7/19-7/21*
Friday, July 28th - Make a deposit for 7/22-7/25*

August 2006

Wednesday, August 2nd - Make a deposit for 7/26-7/28*
Friday, August 4th - Make a deposit for 7/29-8/1*
Wednesday, August 9th - Make a deposit for 8/2-8/4*
Thursday, August 10th - Employees report July tip income to employers if \$20 or more
Friday, August 11th - Make a deposit for 8/5-8/8*
Tuesday, August 15th - Make a deposit for July if under the monthly deposit rule**
Wednesday, August 16th - Make a deposit for 8/9-8/11*
Friday, August 18th - Make a deposit for 8/12-8/15*
Wednesday, August 23rd - Make a deposit for 8/16-8/18*
Friday, August 25th - Make a deposit for 8/19-8/22*
Wednesday, August 30th - Make a deposit for 8/23-8/25*

September 2006

Friday, September 1st - Make a deposit for 8/26-8/29*
Thursday, September 7th - Make a deposit for 8/30-9/1*
Friday, September 8th - Make a deposit for 9/2-9/5*
Monday, September 11th - Employees report August tip income to employers if \$20 or more
Wednesday, September 13th - Make a deposit for 9/6-9/8*
Friday, September 15th - Make a deposit for 9/9-9/12*
Make a deposit for August if under the monthly deposit rule**
Wednesday, September 20th - Make a deposit for 9/13-9/15*
Friday, September 22nd - Make a deposit for 9/16-9/19*
Wednesday, September 27th - Make a deposit for 9/20-9/22*
Friday, September 29th - Make a deposit for 9/23-9/26*

*= Make a Payroll Deposit if you are under the semiweekly deposit rule.

**= Make a Payroll Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS must be initiated at least one day prior to the due dates listed above in order to be timely.

Return Filing Dates

July 3rd

File Form 11-C (Occupational Tax) to register and pay the annual tax if you are in the business of taking wagers.

July 31st

File Form 941 for the 2nd quarter of 2006. If all deposits paid on time and in full, file by August 10th.

File Form 730 (Monthly Tax Return for Wagers) and pay the tax on applicable wagers accepted during June.

August 31st

File Form 730 and pay the tax on applicable wagers accepted during July.

October 2nd

File Form 730 and pay the tax on applicable wagers accepted during August.

Remember, if your tribe sells pull tabs, you must file Forms 11-C for the tribe and any agent(s) who sells pull tabs for the tribe by July 3rd.

Form 730 must also be filed each month.
